

A. G. Contract No. KR90-0643-TRD  
ECS File: JPA-89-155  
Tempe File:  
District File: IGA-FCD90008  
Project: 2021MA151/H0861 01C  
Section: Salt River Channelization  
SPRRTC Bridge to  
McClintock Drive

INTERGOVERNMENTAL AGREEMENT

AMONG  
THE STATE OF ARIZONA,  
CITY OF TEMPE  
AND  
FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

THIS AGREEMENT is entered into October 11, 1990, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "STATE"), the CITY OF TEMPE, acting by and through its City Council (the "CITY") and the FLOOD CONTROL DISTRICT OF MARICOPA COUNTY, acting by and through its Board of Directors (the "DISTRICT").

I. RECITALS

1. The STATE is empowered by Arizona Revised Statutes Section 28-108 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the STATE.

2. The CITY is empowered by Arizona Revised Statutes Section 48-572 and CJTY Charter Section 103 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the CITY.

3. The DISTRICT is empowered by Arizona Revised Statutes Section 48-3603 to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the DISTRICT.

NO. <u>15240</u>
FILED WITH SECRETARY OF STATE
Date Filed <u>10/11/90</u>
<u>Jim Shumway</u> Secretary of State
By <u>Vivian V. Carnewald</u>

4. The CITY and the DISTRICT desire to improve the Salt River specifically between the railroad bridge (west of Mill Avenue) and McClintock Drive, hereinafter referred to as the Project. Incident to the Project, the STATE desires to acquire the borrow necessary for the construction of the East Papago Freeway (SR 202L), in the vicinity of Priest Drive to Indian Bend Wash.

5. A separate agreement, Intergovernmental Agreement No. FCD-89025, dated 2 February 1990, between the CITY and the DISTRICT defines responsibilities for the Project design and future operation and maintenance of the Project.

6. Based on Geotechnical analysis by the CITY, no known landfill deposits are within the rights of way proposed for channel construction.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

## II. SCOPE OF WORK

### 1. The CITY will:

a. Provide design plans, specifications and such other documents necessary for the construction of the Project, all in accordance with STATE standards and compatible with STATE format, at least 30 days prior to bid advertisement. Incorporate STATE and DISTRICT review comments.

b. Obtain all necessary right of way, and grant necessary rights of entry prior to the start of construction. Certify to the STATE and to the DISTRICT, prior to advertising, that all rights of way and easements are controlled by the CITY for construction of the Project. Said rights of way and easements shall be provided by the CITY to the DISTRICT and the STATE at no cost.

c. Provide necessary environmental or geotechnical analyses and permits required to acquire the project rights of way and construct the Project. All costs associated with obtaining the necessary environmental permit(s) and all costs associated with the implementation and continuing maintenance of any mitigation plan required to obtain the permit(s) will be the responsibility of the CITY.

d. Prior to construction bid advertisement, coordinate and obtain for the STATE all necessary permits for construction, at no cost to the STATE.

e. Be responsible for coordinating the relocation of utilities that are determined to be in conflict with the Project. The cost for these relocations will be considered as part of the total Project costs using District utility relocation policies.

f. Be responsible for any construction contractor claims for extra compensation due to delays or whatever reason attributable to the CITY.

g. Monitor construction of the Channel; inspect and approve the completed facility.

h. Provide final mitigation plans associated with this Project to the DISTRICT for review and approval for hydraulic compatibility with the Project. Mitigation areas for this Project may be located within other segments of the Salt River channel.

i. Be responsible for all costs associated with any landscaping and other aesthetic treatments within the Project.

2. The STATE will:

a. Review the CITY design plans and provide comments. Incorporate the CITY's plans for the Project into STATE's project for the construction of segment five of the East Papago Freeway.

b. Participate in the cost of the Project in the amount of \$5,670,000. The STATE shall invoice the DISTRICT quarterly for reimbursement of construction costs related to the Project in excess of \$5,670,000.

c. Call for bids and award one or more construction contracts for the Project. Administer same and make all payments to the contractor.

d. Obtain written concurrence from the CITY and the DISTRICT prior to executing any construction change orders or supplemental agreements which will substantially alter the Project plans or specifications or will result in additional cost of the Project over and above the initial contract amount(s).

e. Upon completion, and upon written approval of the CITY and the DISTRICT, accept the Project on behalf of the parties hereto.

f. Be responsible for any contractor claims for extra compensation due to delays or whatever reason attributable to the STATE.

3. The DISTRICT will:

a. Review the CITY design plans and specifications and provide comments.

b. Monitor construction of the Project. The DISTRICT will inspect and approve the completed facility.

c. If certain areas of the Project are not available for the acquisition of the borrow, allow other means for the STATE to obtain the borrow within the Project limits, including excavating below the proposed finish grade of the channel.

d. Upon completion and acceptance of the Project, maintain the flood control features of the Project after receiving all necessary easements from the CITY.

e. Within thirty days after receipt of an approved invoice, reimburse the STATE for any costs of the Project over \$5,670,000, plus engineering and construction administration, at a rate of 3.5% for the total Project cost.

f. Be responsible for any contractor claims for extra compensation due to delays or whatever reason attributable to DISTRICT.

g. Review for approval of hydraulic compatibility with the channel conveyance, the CITY final mitigation plans associated with the Project. After all comments have been addressed, the DISTRICT shall approve in writing the final mitigation plans.

h. Be responsible for the cost for the relocation of other utilities determined to be in conflict with the Project channelization, which are not relocated as part of a STATE construction contract for the Project.

III. MISCELLANEOUS PROVISIONS

1. The DISTRICT agrees to indemnify and save harmless the STATE and CITY or any of their departments, agencies, officers or employees, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the performance or non-performance by the DISTRICT of any of the provisions of this Agreement. The STATE and CITY shall in all instances be

indemnified against all liability, losses and damages of any nature for or on account of any injuries to, or death of persons, or damages to or destruction of property arising out of, or in any way connected with the DISTRICT's performance or non-performance of this Agreement, except such injury or damage as shall have been occasioned by the negligence of the STATE or CITY. The above cost of damages incurred by the STATE or CITY or any of their departments, agencies, officers or employees, shall include in the event of an action, court costs, expenses for litigation and reasonable attorney's fees.

2. The STATE agrees to indemnify and save harmless the DISTRICT and CITY or any of their departments, agencies, officers or employees, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the performance or non-performance by the STATE of any of the provisions of this Agreement. The DISTRICT and CITY shall in all instances be indemnified against all liability, losses and damages of any nature for or on account of any injuries to, or death of persons, or damages to or destruction of property arising out of or in any way connected with the STATE's performance or non-performance of this Agreement, except such injury or damage as shall have been occasioned by the negligence of the DISTRICT or CITY. The above cost of damages incurred by the DISTRICT or CITY or any of their departments, agencies, officers or employees, shall include in the event of an action, court costs, expenses for litigation and reasonable attorney's fees.

3. CITY agrees to indemnify and save harmless the DISTRICT and the STATE or any of their departments, agencies, officers or employees, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the performance or non-performance by CITY of any of the provisions of this Agreement. The DISTRICT and the STATE shall in all instances be indemnified against all liability, losses and damages of any nature for or on account of any injuries to, or death of persons, or damages to or destruction of property arising out of or in any way connected with the CITY's performance or non-performance of this Agreement, except such injury or damage as shall have been occasioned by the negligence of the DISTRICT or the STATE. The above cost of damages incurred by the DISTRICT or the STATE or any of their departments, agencies, officers or employees, shall include in the event of an action, court costs, expenses for litigation and reasonable attorney's fees.

4. If unsuitable borrow is encountered during construction of the Project, the removal of said borrow will be

considered incident to the construction, if the removal and disposal cost is estimated to be less than \$100,000. If the cost for removal of the unsuitable borrow exceeds \$100,000, the CITY and DISTRICT may negotiate additional cost responsibility over the \$100,000, or request the STATE to stop work in the areas of unsuitable borrow.

5. This agreement shall remain in force and effect until completion of said Project; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, may be cancelled at any time prior to the award of a construction contract, upon thirty (30) days written notice to the other parties. Upon mutual written agreement of all parties, the agreement may be amended.

6. This agreement shall become effective upon filing with the Secretary of STATE.

7. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

8. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

9. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518 (B) and (C).

10. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Engineering Consultants Services  
205 South 17 Avenue, Room 118E  
Phoenix, AZ 85007

City of Tempe  
City Manager  
PO Box 5002  
Tempe, AZ 85280

Flood Control District of Maricopa County  
Planning and Project Management  
3335 West Durango Street  
Phoenix, AZ 85009

11. Attached hereto and incorporated herein is a copy of the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF TEMPE

STATE OF ARIZONA

Department of Transportation

By *Harry E. Mitchell*  
HARRY E. MITCHELL  
Mayor

By *Robert P. Mickelson*  
ROBERT P. MICKELSON  
Deputy State Engineer

ATTEST:

By *Helen R. Fowler*  
City Clerk

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY  
a Municipal Corporation

RECOMMENDED BY:

By *D. E. Sacramento* 7-31-90  
D.E. SACRAMOSO, P.E. Date  
Chief Engineer and  
General Manager

APPROVED AND ACCEPTED:

By *Jim Bruner*  
Chairman, Board of Directors  
Attest:

By *Cherie Brunning* SEP 4 1990  
Clerk of the Board Date

This Intergovernmental Agreement has been reviewed pursuant to Arizona Revised Statutes 11-952, as amended, by the undersigned General Counsel, who has determined that it is in proper form and within the powers and authority granted to the Flood Control District of Maricopa County under the laws of the State of Arizona.

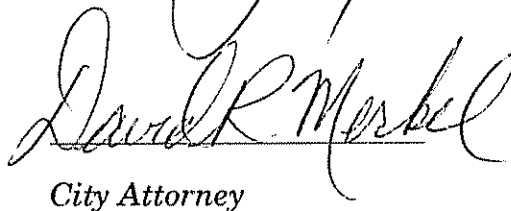
By *Julie M. Symmon*  
General Counsel 8/6/90

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APPROVAL OF THE TEMPE CITY ATTORNEY

*I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, FLOOD CONTROL DISTRICT OF MARICOPA COUNTY and the CITY OF TEMPE and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.*

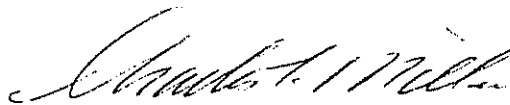
DATED this 30<sup>th</sup> day of July, 1990.

  
City Attorney

RESOLUTION

BE IT RESOLVED on this 7th day of December 1989, that I, CHARLES L. MILLER, as Director of the Arizona Department of Transportation, have determined that it is in the best interest of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with the City of Tempe and Maricopa County Flood Control District for the purpose of constructing the Salt River channelization, in conjunction with East Papago construction.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted for approval and execution by the Deputy State Engineer.

A handwritten signature in cursive script, reading "Charles L. Miller", written in dark ink.

CHARLES L. MILLER, Director  
Arizona Department of  
Transportation

RESOLUTION NO. 90.42

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF  
THE CITY OF TEMPE, ARIZONA, AUTHORIZING THE  
EXECUTION OF AN AGREEMENT WITH THE STATE OF  
ARIZONA, DEPARTMENT OF TRANSPORTATION, AND THE  
MARICOPA COUNTY FLOOD CONTROL DISTRICT.

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WHEREAS, the City of Tempe and the Maricopa County Flood  
Control District are desirous to improve the Salt River between the  
railroad bridge at Ash Avenue to McClintock Drive and

WHEREAS, the State of Arizona acting through its Department  
of Transportation desires to acquire the borrow necessary for the  
construction of the East Papago Freeway.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL  
OF THE CITY OF TEMPE, ARIZONA as follows:

That the Mayor of the City of Tempe hereby be authorized to  
execute an agreement with the State of Arizona, Department of  
Transportation and the Maricopa County Flood Control District setting  
forth the terms and conditions for construction of the Salt River  
Channelization, City of Tempe Project No. 876191.

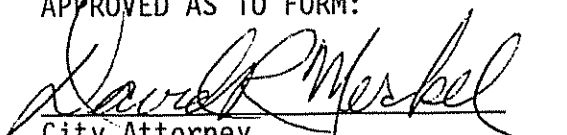
PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA  
this 9th day of August, 1990.

  
Mayor

ATTEST:

  
City Clerk

APPROVED AS TO FORM:

  
City Attorney



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert K. Corbin

INTERGOVERNMENTAL AGREEMENT

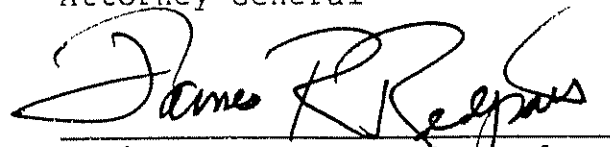
DETERMINATION

A. G. Contract No. KR90-0643-TRD, is an agreement between public agencies has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 2<sup>nd</sup> day of October, 1990.

ROBERT K. CORBIN  
Attorney General

  
Assistant Attorney General  
Transportation Division